Semi-colonialism and international legal history: the view from Bhutan

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As simply a matter of history, the Kingdom of Bhutan's experience with Occidental powers could not be more different than that of the colonial experience of Bhutan's neighbor and closest ally, India. Bhutan proudly – and for all intents and purposes, rightly – claims that it has never been conquered or colonized, either by a European power or by an Asian neighbor.

Furthermore, consequences of geography and geology make comparisons with the "semi-colonial" experience of Thailand inapt. Bhutan is a landlocked state nestled high in the eastern Himalayas, with no major trading routes, strategically important mountain passes, or mineral or other resources to attract the ravenous eyes of would-be intermeddlers.

Nonetheless, Professor Singh's approach – bringing the historian's notion of "semi-colonialism" and to bear on core questions of public international law – is a welcome lens through which to view the history of Bhutan and, in particular, the special relationship Bhutan enjoyed with the British colony of India and, ultimately, India itself.

The author observers that "Between 1851 and 1910, Siam [the nation today called "Thailand"] confronted three issues: (1) internal integration or Siamese colonialism; (2) external territorial losses; and (3) the survival of an independent Siam." The same could be said of Bhutan during the same period.

Throughout this piece, I have relied upon Karma Phuntsho's excellent *The History of Bhutan* which I commend to the reader for further description of Bhutan's history from prehistory to modern times.

Sinchula to Punakha to Darjeeling – The Westphalian View

According to orthodox history, in 1864 and 1865, Bhutan and British India fought the Duar War, only Bhutan's second sustained military or diplomatic engagement with a European power (the first occurring 90 years earlier, against the same opponent over the same territory). The war was fought to resolve disputes over the Duars – alluvial floodplains which constitute the geographic gateways to Bhutan, located in modern-day Assam, Bengal, and southeastern Bhutan. At the conclusion of the war – which British India won – the two states concluded the 1865 Treaty of Sinchula, which established "perpetual peace and friendship between the British Government and the Government of Bhootan [sic]," ceded the Duars to British India, and repatriated British subjects held by Bhutan.

The terms of the Treaty of Sinchula were incorporated by reference in the 1910 Treaty of Punakha, which also replaced Article VIII of the original treaty in three important senses:

- The British government agreed not to interfere in the internal administration of Bhutan;
- The Bhutanese government agreed "to be guided by the advice of the British Government in regard to its external relations"; and
- Disputes regarding the formerly dispute Duars would be "referred for arbitration to the British Government which will settle them in such manner as justice may require… ."

The Treaty of Sinchula was, importantly, carried forward by the newly-independent India, as one of its first bilateral treaties, in the "Treaty of Friendship between India and Bhutan," signed at Darjeeling on 8 August 1949. Article 2 of the 1949 treaty preserved the tenor of Article VIII of the Punakha treaty, stating, "The Government of India undertakes to exercise no interference in the internal administration of Bhutan. On its part the Government of Bhutan agrees to be guided by the advice of the Government of India in regard to its external relations."

The orthodox view thus has tiny Bhutan – a monarchy outmatched in a territorial war against a European colonialist power – ceding full authority over its foreign affairs (admittedly, under the diplomatic niceties of "agree[ing] to be guided by the advice") for nearly a hundred years, first to the British Raj, and then to the post-colonial successor state in Delhi. This arrangement was abolished only in 2007, with the adoption of the new "India-Bhutan Friendship Treaty," which stipulated that the two States "shall cooperate closely with each other on issues relating to their national interests" and that "Neither Government shall allow the use of its territory for activities harmful to the national security and interest of the other."

As received, this is all very proper, all very Westphalian. But Professor Singh's proposed analysis – supplemented by the work of Judge Wellington Koo in the *Temple of Preah Vihear* case – suggests that there is more to be learned, beneath the surface. And, not surprisingly, there is.

Sinchula to Punakha to Darjeeling – The Semi-Colonialist View

The author's analysis suggests that certain historical facts – well-known to Bhutanese historians, but rarely applied to Sinchula and its progeny – might in fact place Bhutan's relations with the British Raj and with modern-day India – in a very different light.

It is probably incorrect to speak of a unitary "Bhutan" during the time of the Duar War. Bhutan was first united under *Zhabdrung* Ngawang Namgyel in the 17thcentury, but that unity did not long survive the Zhabdrung's death. Although Bhutan was nominally governed by the *Druk Desi* (effectively, a King), the country was in fact governed by a *Mandala* system of the kind described by Professor Singh.

Bhutanese politics was for nearly 300 years characterized by constant conflict between the Druk Desi and a collection of regional *Penlops* (Dukes), who frequently warred with one another, rebelled against the Druk Desi, and exercised almost total control over the territory within their respective purviews. The first British incursion into the Bhutanese-controlled Duars was prompted by a turncoat Penlop in Cooch Behar, who sought British support to cast off control of the Druk Desi; the 1864-65 Duar War likewise came in the wake of a nationwide civil war, which among other things featured multiple Druk Desis claiming sovereignty over the entirety of Bhutan.

The 1865 Treaty of Sinchula can, in this light, be re-cast in the same light as the 1904 Treaty that Professor Singh discusses: an Occidental power seeking to set permanent black-line boundaries negotiating with an Asian potentate looking, chiefly, to avert foreign distractions *en route* to settling much more pressing local governance issues. Indeed, the 1910 Treaty of Punakha was negotiated with Bhutan's first internally-acknowledged hereditary monarch, Ugyen Wangchuck, precisely for the purpose of legitimizing the Sinchula pact under the newly-organized (Westphalia-friendly) Bhutanese political order. (Indeed, Ugyen Wangchuck, the former *Penlop* of Trongsa, was British India's favoured disputant during the period between Sinchula and Punakha: *Dasho* Ugyen was granted a KCIE in 1905 and a KCSI in 1911.)

All of which leads up to the 1949 Darjeeling treaty, whereby the newly-independent (and, according to Professor Singh's taxonomy, "post-colonial") government of India simply utilized the same principles of post-colonial succession to bring forward the semi-protectorate relationship established at Punakha, rendering Bhutan a permanent diplomatic fiefdom of India.

Conclusion – A Tool For Modern-Day Diplomats

Bhutan has not yet had its *Preah Vihear* moment. Bhutan's dotted-line boundaries – in Assam, in Arunachal Pradesh, and (most visibly) in Doklam – remain unresolved. Bhutan's northern and western borders with China – and its southern and eastern borders with India – remain the topic of ongoing serial negotiations between and among the three states.

While Bhutan would doubtless take issue with the term "semi-colonial" – again, because the nation has never been conquered or colonized – the lens proposed by the author might well provide ammunition to all sides – in Delhi, in Thimphu, and in Beijing – for a more honest assessment of the appropriate borders between Bhutan and its superpower neighbors to the north and the south.

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